IN THE HIGH COURT OF GUJARAT AT AHMEDABAD

INCOME TAX REFERENCE No 29 of 1987

For Approval and Signature:

Hon'ble MR.JUSTICE M.S.SHAH Sd/-
and
Hon'ble MR.JUSTICE D.A.MEHTA Sd/-

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1. Whether Reporters of Local Papers may be allowed to see the judgements? : NO

2. To be referred to the Reporter or not? : NO

3. Whether Their Lordships wish to see the fair copy of the judgement? : NO

4. Whether this case involves a substantial question of law as to the interpretation of the Constitution of India, 1950 of any Order made thereunder? : NO

5. Whether it is to be circulated to the Civil Judge? : NO

COMMISSIONER OF INCOME-TAX
Versus
GUJARAT STATE FERTILISERS CO.

Appearance:
1. INCOME TAX REFERENCE No. 29 of 1987
MR MR BHATT FOR MR RP BHATT for Appellant.
MR MJ SHAH FOR MR JP SHAH for Respondent No. 1

CORAM : MR.JUSTICE M.S.SHAH
and
MR.JUSTICE D.A.MEHTA

Date of decision: 28/08/2001

ORAL JUDGEMENT

(Per : MR.JUSTICE M.S.SHAH)

At the instance of the Revenue, in respect of assessment years 1980-81 and 1981-82, the following

questions of law are referred for our opinion :

"A.Y.1980-81.

1 Whether in law and on facts the assessee is entitled to an investment allowance on training centre assets, mobile equipments, fencing and a compound wall ?

2 Whether in law and on facts, the assessee is entitled to depreciation at a higher rate on fencing and on telephone equipment ?

A.Y.1981-82.

1 Whether in law and on facts in assessee is entitled to an investment allowance on training centre assets, telephone equipments, mobile equipments and factory fans ?

2 Whether in law and on facts, the assessee is entitled to depreciation at a higher rate on fencing and on telephone equipments ? "

2 We have heared learned Counsel Mr.M.R.Bhatt for the applicant-revenue and Mr.M.J.Shah for the respondent assessee.

3 Since the first question is common for many items in respect of both the years under consideration, we will take up the question item wise.

4 As far as the training centre assets are concerned, in the assessee's own case for the assessment year 1971-72 C.I.T. vs. Gujarat State Fertilizer Co. Ltd., 219 I.T.R.550, this Court has held that training centre assets are eligible for development rebate u/s.33 of the Income Tax Act, 1961 (hereinafter referred to as 'the Act'). The learned Counsel for the parties agree that the same test is to be applied for grant of investment allowance and that in I.T.R. No.98 of 1995 between the same parties decided on 7-9-2000, this Court has held that the investment allowance is admissible for

the cost of construction of the training centre our answer to this part of the question for both these years is therefore in the affirmative i.e. in favour of the assessee and against the revenue.

5 So far as the investment allowance on mobile equipments is concerned, the learned Counsel for the parties agreed that in respect of the assessment years 1975-76, the C.I.T.(Appeals) had accepted the assessee's claim for investment allowance on mobile equipments such as cranes, loaders, fork lifts, motors, drums etc., Mr.M.J.Shah, learned Counsel has further submitted that in C.I.T. vs. Tribeni Tissues Ltd., 210 ITR 47, C.I.T. vs. Mahindra Ugine Steel Co.Ltd.,230 ITR 729, C.I.T. vs. Mahindra Ugine Steel Co.Ltd., 233 ITR 204, three other High Courts have taken the same view that mobile equipments like cranes, shovel, looders, fork lifts, motors, drums, generator etc., are not motor vehicles and are therefore entitled to investment allowance. We concur with that view and accordingly answer that part of question for both the assessment years, which pertains to mobile equipments, in the affirmative i.e. in favour of the assessee and against the revenue.

6 As far as the question of investment allowance on telephone equipments is concerned, the learned Counsel for the parties agree that the question has been answered against the assessee and in favour of the revenue in C.I.T. vs. Gujarat State Fertilizer Co.Ltd., 203 I.T.R.526. Accordingly, that part of question No.1 for assessment year 1981-82 which pertains to telephone equipments is answered in the negative i.e. in favour of the revenue and against the assessee.

7 As regards investment allowance and fencing of compound wall, in the aforesaid decision between the same parties i.e. C.I.T. vs. G.S.F.C.(Supra), this Court has considered the said question and it has been held that since fencing and compound walls are part of the factory building and since the factory building itself is not to be considered as a plant, investment allowance is not admissible for the cost of the fencing and compound wall. Accordingly, this part of question No.1 for both the assessment years is answered in the negative i.e against the assessee and in favour of the revenue.

8 As far as investment allowance on factory fans is concerned, this Court in C.I.T. vs. Tarun Commercial Mills Ltd., 151 I.T.R.75 has already decided the question

in favour of the assessee and against the revenue. Accordingly, that portion of question No.1 in respect of assessment year 1981-82 pertaining to factory fans is answered in the affirmative i.e. in favour of the assessee and against the revenue.

9 Now we come to common question No.2 for both the years pertaining to depreciation at higher rate on fencing and on telephone equipment. The learned Counsel for the parties agree that as far as the question of depreciation on fencing is concerned, in view of the decision between the same parties in Commissioner of Income Tax vs. Gujarat State Fertilizers Co.Ltd., 247 ITR 690, the assessee is not entitled to depreciation at a higher rate on fencing. This part of question No.2, for both the years, is accordingly answered in the negative i.e. in favour of the revenue and against the assessee.

10 As far as the question of depreciation for higher rate on telephone equipments is concerned, that part of the quesion has already been decided against the assessee and in favour of the revenue in C.I.T. vs. Gujarat State Fertilizer Co.Ltd., 203 ITR 526, Accordingly, this part of question No.2 for both these assessment years will have to be answered in the negative i.e. in favour of the revenue and against the assessee.

11 In view of the above discussion, the questions referred to us, same are answered in light of the aforesaid findings given by us.

The Reference stands disposed of accordingly with no order as to costs.

Sd/- Sd/-
(M.S.Shah, J) (D.A.Mehta, J)
m.m.bhatt